

## Message Text

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ORIGIN IO-14

INFO OCT-01 CIAE-00 ICA-11 INR-10 NSAE-00 AID-05 AF-10  
ARA-10 EA-10 EUR-12 NEA-10 ISO-00 HA-05 L-03  
OIC-02 /103 R

DRAFTED BY IO/UNESCO:RDFORSTER:L/UNA:AKRECZKO:JU  
APPROVED BY IO:CWMAYNES  
IO/UNESCO - CWARVARIV  
EUR/EE - ISILINS  
HA - RMAXIM  
IO/UNP - RHARE  
L - SSCHWEBEL  
EA/ANP - AWAJDA

-----028410 070311Z /63

P R 070118Z APR 78  
FM SECSTATE WASHDC  
TO AMEMBASSY PARIS PRIORITY  
INFO AMEMBASSY BUCHAREST  
USMISSION GENEVA  
AMEMBASSY CANBERRA  
AMEMBASSY THE HAGUE  
USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 089488

NESCO

E.O. 11652:GDS

TAGS: PFOR, PORG, SHUM, UNESCO

SUBJECT: UNESCO: DUMITRESCU

REFS: A) PARIS 10821; B) PARIS 10605; C) STATE 63345;  
D) BUCHAREST 2096; E) PARIS 10273

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1. DEPT APPRECIATES INFO CONTAINED REFTELS A AND B.
2. RE UNDERSTANDING OF PHILP REPORTED IN REFTEL B, PARA 4, ROMANIA DID ENTER A RESERVATION TO SECTIONS 24 AND 32 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES. SECTION 32 OF THAT CONVENTION PROVIDES THAT DIFFERENCES BETWEEN STATES ARISING OUT OF

ITS INTERPRETATION OR APPLICATION SHALL REPEAT SHALL BE REFERRED TO THE ICJ. IF THE DISPUTE IS BETWEEN A SPECIALIZED AGENCY AND A MEMBER STATE, SECTION 32 PROVIDES THAT THE ICJ SHALL REPEAT SHALL BE ASKED FOR AN ADVISORY OPINION, WHICH "SHALL BE ACCEPTED AS DECISIVE BY THE PARTIES." SECTION 24 PROVIDES THAT "IF CONSULTATIONS FAIL TO ACHIEVE A RESULT SATISFACTORY TO THE STATE AND THE SPECIALIZED AGENCY CONCERNED, THE QUESTION WHETHER AN ABUSE OF PRIVILEGE OR IMMUNITY HAS OCCURRED SHALL BE SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE IN ACCORDANCE WITH SECTION 32".

3. ROMANIAN RESERVATION TO THESE TWO ARTICLES IS AS FOLLOWS:

"THE SOCIALIST REPUBLIC OF ROMANIA STATES THAT IT DOES NOT CONSIDER ITSELF BOUND BY THE PROVISIONS OF SECTIONS 24 AND 32, WHEREBY THE QUESTION WHETHER AN ABUSE OF PRIVILEGE OR IMMUNITY HAS OCCURRED, AND DIFFERENCES ARISING OUT OF THE INTERPRETATION AND APPLICATION OF THE CONVENTION AND DISPUTES BETWEEN SPECIALIZED AGENCIES AND MEMBER STATES, SHALL BE REFERRED TO THE INTERNATIONAL COURT OF JUSTICE. THE POSITION OF THE SOCIALIST REPUBLIC OF ROMANIA IS THAT SUCH QUESTIONS, DIFFERENCES OR DISPUTES MAY BE REFERRED TO THE INTERNATIONAL COURT OF JUSTICE ONLY WITH THE AGREEMENT OF THE PARTIES IN EACH INDIVIDUAL CASE."

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4. ROMANIAN RESERVATION PREVENTS UNESCO FROM SEEKING AN ICJ OPINION UNDER SECTION 32 OF THE CONVENTION. HOWEVER, RESERVATION ONLY RELATES TO PROCEDURE FOR RESOLVING DISPUTES, I.E., ICJ COMPULSORY JURISDICTION TO ISSUE A BINDING DECISION; IT DOES NOT AFFECT ROMANIA'S SUBSTANTIVE OBLIGATIONS UNDER THE CONVENTION.

5. THEREFORE, IF UNESCO IS TO REQUEST AN ADVISORY OPINION IN THIS CASE, IT MUST HAVE ALTERNATIVE AUTHORITY UPON WHICH TO BASE ICJ JURISDICTION FOR HEARING QUESTIONS CONCERNING ROMANIA'S TREATMENT OF DUMITRESCU. THERE ARE TWO ALTERNATIVES:

(A) UNESCO COULD PROCEED PURSUANT TO THE UNESCO CONSTITUTION, WHICH PROVIDES THAT "ANY QUESTION OR DISPUTE CONCERNING THE INTERPRETATION OF THIS CONSTITUTION SHALL BE REFERRED FOR DETERMINATION TO THE INTERNATIONAL COURT OF JUSTICE OR TO AN ARBITRAL TRIBUNAL, AS THE GENERAL CONFERENCE MAY DETERMINE UNDER ITS RULES OF PROCEDURE". (GENERAL CONFERENCE RULES OF PROCEDURE PROVIDE THAT THE LEGAL COMMITTEE MAY REPEAT MAY BE CONSULTED ON ANY QUESTION CONCERNING THE INTERPRETATION OF

THE CONSTITUTION AND MAY RECOMMEND BY A SIMPLE MAJORITY THAT THE GENERAL CONFERENCE REFER ANY SUCH QUESTION TO THE ICJ FOR AN ADVISORY OPINION.) DUMITRESCU CASE CLEARLY PRESENTS LEGAL QUESTIONS WITHIN SCOPE OF UNESCO CONSTITUTION. SINCE ROMANIA DOES NOT HAVE A RESERVATION TO THE UNESCO CONSTITUTION AND SINCE ROMANIA'S RESERVATION TO SECTION 32 OF THE CONVENTION CANNOT VITIATE THE AUTHORITY OF THE CONSTITUTION, UNESCO IS CLEARLY ENTITLED TO SEEK AN ADVISORY OPINION ON WHETHER ROMANIA'S ACTIONS SQUARE WITH ITS OBLIGATIONS UNDER THE UNESCO CONSTITUTION.

(B) UNESCO COULD, ADDITIONALLY OR ALTERNATIVELY, PROCEED UNDER AUTHORITY GRANTED BY THE UNGA, PURSUANT TO ARTICLE 96 (2) OF THE UN CHARTER, TO SEEK ADVISORY OPINIONS ON  
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LEGAL QUESTIONS "ARISING WITHIN THE SCOPE OF ITS ACTIVITIES OTHER THAN QUESTIONS CONCERNING THE RELATIONSHIPS OF THE ORGANIZATION AND THE UN OR OTHER SPECIALIZED AGENCIES." THIS GRANT OF AUTHORITY WAS MADE WHEN UNGA APPROVED THE AGREEMENT BETWEEN THE UN AND UNESCO MAKING UNESCO A SPECIALIZED AGENCY. THE ROMANIAN RESERVATION DOES NOT AND CANNOT RESTRICT THE AUTHORITY OF UNESCO TO SEEK AN ADVISORY OPINION ON ANY LEGAL QUESTION "ARISING WITHIN THE SCOPE OF ITS ACTIVITIES...", EVEN IF THE QUESTION IS ONE RELATING TO MATTERS COVERED BY THE CONVENTION.

6. DEPT WOULD APPRECIATE REACTION OF UNESCO LEGAL ADVISER TO ABOVE LEGAL ANALYSIS.

7. UNGA AUTHORIZATION FOR UNESCO TO SEEK ADVISORY OPINIONS EXTENDS TO UNESCO GENERAL CONFERENCE AND ALSO TO UNESCO EXECUTIVE BOARD "ACTING IN PURSUANCE OF AN AUTHORIZATION BY THE GENERAL CONFERENCE." ACCORDINGLY, DEPT NEEDS REPLY ASAP TO REFTEL C, PARA 4, WHICH ASKED WHETHER UNESCO GENERAL CONFERENCE HAS GIVEN BLANKET AUTHORIZATION TO EXECUTIVE BOARD TO SEEK ADVISORY OPINIONS OR WHETHER EXECUTIVE BOARD COULD ONLY RECOMMEND ACTION TO GENERAL CONFERENCE. WE ASSUME LUSSIER WOULD BE AVAILABLE TO CONSULT ON THIS.

8. DEPT WOULD APPRECIATE RECEIVING ADDITIONAL INFORMATION CONCERNING LUSSIER/ICJ MEMO (REFTEL B, PARA 3) INCLUDING COPY OF MEMO, IF AVAILABLE. DEPT. ALSO REQUESTS CLARIFICATION AS TO FORMAL PROCEDURE, IF ANY, BY WHICH MEMO WOULD BE FORWARDED BY ICJ TO UNESCO EXECUTIVE BOARD.

9. DEPT ALSO REQUESTS USDEL TO ASCERTAIN FOLLOWING:  
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(I) IS AUSTRALIA FIRMLY COMMITTED TO TAKING LEAD IN SEEKING ICJ OPINION THROUGH EXECUTIVE BOARD? AN EXACT STATEMENT OF THE QUESTIONS UPON WHICH THE ADVISORY OPINION IS ASKED MUST BE CONTAINED IN A REQUEST FOR AN ADVISORY OPINION. HAS AUSTRALIA PREPARED SUCH QUESTIONS? IF SO, DEPT WOULD APPRECIATE COPY AND OPPORTUNITY TO COMMENT. IF NOT, PERMDEL SHOULD INFORM PHILP OF NEED TO DO SO AND SHOULD INDICATE OUR WILLINGNESS TO JOIN IN THEIR FORMULATION. (IF ANOTHER COUNTRY WERE TO TAKE INITIATIVE ON THIS--SEE PARA 10, BELOW--WE WOULD WISH TO JOIN THEM IN FORMULATING QUESTIONS.)

(II) ARE OTHER IG COUNTRIES PREPARED TO SUPPORT THE PROPOSAL?

(III) ARE OTHER COUNTRIES PREPARED TO SUPPORT THE PROPOSAL? WE NOTE THAT ECHEVERRIA (MEXICO) HAS ALREADY PLAYED IMPORTANT ROLE IN TRYING TO ACHIEVE RESOLUTION OF THIS ISSUE AND WOULD LIKE TO KNOW IF HE IS PREPARED TO CONTINUE PLAY KEY ROLE.

(IV) IS DG AWARE OF OUR CONCERN AND CAN HE BE INDUCED TO ACTIVELY SUPPORT THE INITIATIVE?

WE SHARE EMBASSY BUCHAREST VIEW (REF D) THAT U. S. ALONE IS UNLIKELY TO FILL GAP IN RANKS LEFT BY DEPARTURE OF UNESCO AND INTERNATIONAL CIVIL SERVANTS ORGANIZATIONS WHICH M'BOW EVIDENTLY NOW CONTEMPLATES (REF E).

10. IT WOULD, THEREFORE, BE MOST DESIRABLE IF DG WOULD UNDERTAKE INITIATIVE TO RECOMMEND THAT EXECUTIVE BOARD (OR, IF NECESSARY, GENERAL CONFERENCE) REQUEST ICJ OPINION. (JUDGING FROM PARA 6 OF REF A, BOARD CHAIRMAN MARTIN COULD BE VALUABLE ALLY IN THIS RESPECT.) HOWEVER, FAILING THIS AND IF NEITHER AUSTRALIA NOR ANY OTHER  
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MEMBER IS WILLING TO FIRMLY COMMIT ITSELF TO UNDERTAKE INITIATIVE FOR WHICH THERE IS NEVERTHELESS IG SUPPORT, U. S. WOULD PROPOSE TO BOARD THAT IT REQUEST ADVISORY OPINION. IN THAT EVENT, PERMDEL SHOULD LAY GROUNDWORK FOR U.S. INITIATIVE AND INFORM DEPT OF STEPS TAKEN.

11. DEPT CONCURS WITH SENTIMENTS EXPRESSED BY MARTIN (UK)

IN REFTTEL A, PARA 3, THAT ROMANIA SHOULD RECEIVE CORRECT PARLIAMENTARY TREATMENT. PRIVATE CONSULTATIONS WITH ROMANIA MIGHT BE HELD PRIOR TO PUBLIC DISCUSSION. HOWEVER, IN LIGHT OF REPEATED ATTEMPTS THAT UNESCO HAS MADE TO RESOLVE THIS ISSUE, WE SHOULD NOT ALLOW PRIVATE TALKS TO SUBSTITUTE FOR PUBLIC REQUEST FOR ICJ OPINION, UNLESS PRIVATE TALKS REVEAL MARKED CHANGE IN ATTITUDE OF ROMANIA ON THIS CASE AND PRODUCES AGREEMENT THAT FINALLY AND SATISFACTORILY RESOLVES THE CASE. (BEST OUTCOME, WE THINK, FOR ALL PARTIES CONCERNED, INCLUDING GOR, WOULD BE FOR DUMITRESCU TO BE ALLOWED TO RETURN TO HIS UNESCO POST.)

12. RE ISSUES RAISED PARAS 7 AND 8 OF REFTTEL A, DEPT WOULD PREFER TO TAKE NO LEAD IN PUBLICIZING REPLY TO ANA'S LETTER TO PRESIDENT, LEAVING MATTER ENTIRELY TO ANA. LETTER TO ANA WAS POUCHED 4/4/78 AND SHOULD BE HELD FOR AMBASSADOR TORRES' RETURN. VANCE

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Previous Handling Restrictions:** n/a  
**Reference:** 78 PARIS 10821, 78 PARIS 10605, 78 STATE 63345  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
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**Review Event:**  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014